

Regular Session, 2011

HOUSE BILL NO. 175

BY REPRESENTATIVE TALBOT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EMPLOYMENT: Requires employers to use the E-Verify program to verify the citizenship status of applicants

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AN ACT

To amend and reenact R.S. 23:991, 992, 992.2, 995(A), and 996(A) and (B) and to enact R.S. 23:991.1 and 992.3, relative to employment of certain aliens; to provide for the purpose and enforcement of rules; to provide for definitions; to require employment verification through the federal E-Verify system; to prohibit public employers from contracting with certain persons; to require the Louisiana Workforce Commission to provide training and instructions; to provide for immunity; to require that investigations be conducted by the Louisiana Workforce Commission; to provide for civil penalties; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:991, 992, 992.2, 995(A), and 996(A) and (B) are hereby amended and reenacted and R.S. 23:991.1 and 992.3 are hereby enacted to read as follows:

§991. Purpose, enforcement

The purpose of this Part is to exercise the state's police powers to regulate employment relations in order to protect workers within the state. The Louisiana Workforce Commission, in conjunction with the Louisiana State Police, the criminal sheriffs, and the local police departments for the various political subdivisions of this state shall enforce the provisions of this Part; except that R.S. 23:995 shall be enforced by the Louisiana Workforce Commission.

1 §991.1. Definitions

2 As used in this Part, unless the context clearly indicates otherwise, the
3 following terms shall be defined as follows:

4 (1) "Private employer" means any person who has one or more employees,
5 and who is not a public employer.

6 (2) "Public employer" and "public agency" mean any department, agency,
7 or instrumentality of the state or a political subdivision of the state.

8 (3) "Status verification system" means an electronic system operated by the
9 federal government to verify or ascertain the citizenship or immigration status for
10 authority to legally work in the United States. The status verification system shall
11 be deemed to include:

12 (a) The electronic verification of work authorization program of the Illegal
13 Immigration Reform and Immigration Responsibility Act of 1996, Section 403(a);
14 8 U.S.C. 1324(a), and operated by the United States Department of Homeland
15 Security.

16 (b) Any equivalent federal program designated by the United States
17 Department of Homeland Security or any other federal agency authorized to verify
18 the work eligibility status of newly hired employees, pursuant to the Immigration
19 Reform and Control Act of 1986.

20 (c) Any other independent, third-party system, permitted for use by the
21 federal government, with an equal or higher degree of reliability as the programs,
22 systems, or processes described in this Paragraph.

23 (d) The Social Security Number Verification Service, or such similar online
24 verification process implemented by the United States Social Security
25 Administration.

26 (4) "Subcontractor" means a subcontractor, contract employee, staffing
27 agency, or any contractor.

28 (5) "Unauthorized alien" means an alien as defined in 8 U.S.C.
29 1324(a)(h)(3).

1 §992. Employment of certain aliens; ~~contracts~~; prohibition; compliance assistance

2 A. No person, either for himself or on behalf of another, private or public
3 employer shall employ, hire, recruit, or refer, for private or public employment
4 within the state, an unauthorized alien or contract, subcontract, or otherwise enter
5 into any contractual agreement to obtain the labor of an unauthorized alien who is
6 not entitled to lawfully reside or work in the United States.

7 B. Every public and private employer shall register with and utilize a status
8 verification system as described in R.S. 23:991.1(3) to verify the federal employment
9 authorization status of all new employees.

10 C. No public employer shall enter into any contract unless the person with
11 which the public employer contracts, registers, and participates in the status
12 verification system provided for in R.S. 23:991.1. The public employer shall require
13 that any bid or proposal include affirmation that the prospective contractor and any
14 subcontractor participate in such a system to assist in verifying the identity and legal
15 working status of all new employees.

16 D. No private employer shall enter into any contract to provide products or
17 services for a public agency unless the private employer registers and participates in
18 the status verification system provided for in R.S. 23:991.1 to assist in verifying the
19 identity and legal working status of all new employees.

20 E. A public employer shall cancel any contract with a private employer if
21 that private employer has not participated in the status verification system as
22 required by this Part.

23 F. Every contract entered into between a public agency and a private
24 employer shall be deemed to include a provision that authorizes the public agency
25 to cancel the contract if the private employer does not participate in the status
26 verification system as required by this Part.

27 G. For two years, the Louisiana Workforce Commission shall provide
28 training and instructions regarding the completion of the registration process for the

1 federal E-Verify system and technical advice regarding participation in any other
2 status verification system provided for in R.S. 23:991.1.

3 H. The provisions of this Section shall be implemented and enforced without
4 regard to race, religion, ethnicity, or national origin.

5 * * *

6 §992.2. Bar to prosecution; immunity

7 No ~~person~~ private or public employer shall be prosecuted ~~under~~ pursuant to
8 the provisions of this Part upon a showing that ~~each and every person in his employ~~
9 ~~has~~ he has verified the employment eligibility of an employee using a status
10 verification system provided for in R.S. 23:991.1. Any private or public employer
11 who relies in good faith on the status verification system to determine an employee's
12 eligibility to work shall be immune from liability or suit resulting from any
13 nonconfirmation of an applicant's work eligibility. ~~provided a picture identification~~
14 ~~and one of the following documents of which the employer has retained a copy for~~
15 ~~his records:~~

16 (1) ~~United States birth certificate or certified birth card.~~

17 (2) ~~Naturalization certificate.~~

18 (3) ~~Certificate of citizenship.~~

19 (4) ~~Alien registration receipt card.~~

20 (5) ~~United States immigration form I-94 (with employment authorized~~
21 ~~stamp).~~

22 §992.3. Investigation

23 The Louisiana Workforce Commission shall accept, review, and investigate
24 in a timely manner any credible complaint that a public or private employer has
25 violated the provisions of this Part. The executive director shall verify the work
26 authorization status of the employees using a status verification system provided for
27 in R.S. 23:991.1 and notify the public or private employer of the results. The public
28 or private employer shall immediately terminate an employee whose work
29 authorization was not verified. After a complete investigation conducted by the

1 Louisiana Workforce Commission and a finding that an employer in Louisiana has
2 failed to verify the work authorization of an employee by using a status verification
3 system, the executive director shall notify the attorney general or district attorney in
4 the parish in which the employer is domiciled of such action.

5 * * *

6 §995. Civil penalties

7 A. ~~No person, either for himself or on behalf of another, private or public~~
8 employer shall employ, hire, recruit, or refer, for private or public employment
9 within the state, an unauthorized alien ~~or contract, subcontract, or otherwise enter~~
10 into any contractual agreement to obtain the labor of an unauthorized alien who is
11 not entitled to lawfully reside or work in the United States.

12 * * *

13 §996. Cease and desist order; injunctive relief

14 A. An agency, department, board, or commission of the state or any political
15 subdivision may notify the attorney general or the district attorney that the agency
16 has determined, after an investigation initiated by the agency or by a private party's
17 written complaint to the agency, that an employer who operates a Louisiana business
18 or enterprise is knowingly employing an ~~undocumented~~ unauthorized alien in
19 violation of this Chapter.

20 B. The attorney general or district attorney in the parish in which the
21 employer is domiciled or in the parish in which the violation occurred is empowered
22 to issue an order to the employer engaged in the activity constituting the violation
23 of the provision of this Chapter directing such employer to cease and desist from
24 such activity and to discharge from employment, for cause, the ~~undocumented~~
25 ~~workers~~ unauthorized alien. Such order shall be issued in the name of the state of
26 Louisiana under the official seal of the attorney general or the official seal of the
27 district attorney and shall be served where the employer is domiciled in the state of
28 Louisiana or the employer's registered agent in the state of Louisiana.

29 * * *

1 Section 2. The provisions of this Act shall not apply to any existing employees who
2 were hired prior to January 1, 2012. The provisions of present law shall remain in full effect
3 and apply to all existing employees hired prior to January 1, 2012.

4 Section 3. The provisions of this Act shall not apply to any contract entered into
5 prior to January 1, 2012.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Talbot

HB No. 175

Abstract: Requires public and private employers to use the federal E-Verify system to determine an applicant's legal eligibility to work.

Present law (R.S. 23:991) provides for the regulation of employment relations in order to protect workers and that the state police, sheriffs, and local police as well as the Louisiana Workforce Commission (LWC) shall enforce the provisions of present law as applicable.

Proposed law retains present law and adds a provision that requires the LWC work with state police and local police departments to enforce the law.

Proposed law provides for definitions.

Present law (R.S. 23:992) prohibits any person from hiring an alien who is not entitled to lawfully reside or work in the U.S.

Proposed law expands present law to prohibit any employer from entering into any contractual agreement to obtain the labor of an unauthorized alien who is not entitled to lawfully reside or work in the U.S.

Proposed law requires every employer to register with and utilize a status verification system to verify the federal employment authorization status of all new employees.

Proposed law prohibits certain employers from entering into a contract with any party who does not utilize a status verification system to verify the legal working status of all new employees.

Proposed law further requires a public employer to cancel any contract with a private employer who has not participated in the status verification system.

Proposed law requires that the LWC provide training and instruction for two years for the federal e-verify system and for any other status verification systems.

Proposed law shall be exercised without regard to race, religion, ethnicity, or national origin.

Present law (R.S. 23:992.2) prohibits prosecution if employees have provided a picture identification and one of several certain other identification documents.

Proposed law repeals the requirement for the employer to retain identification documentation and requires that the employer verify employment eligibility by using a status verification system.

Proposed law provides immunity from liability to any employer who relies in good faith on the status verification system to determine an applicant's eligibility to work.

Proposed law (R.S. 23:992.3) requires the LWC to investigate complaints of violations and the executive director of the LWC to verify the work verification status of employees who are employed with the employer against whom the complaint was alleged.

Proposed law requires the employer to terminate any employee whose work status could not be verified by the director.

Proposed law requires that after a complete investigation that reveals that the employer failed to utilize the status verification system, the executive director of LWC shall notify the attorney general or district attorney.

Present law (R.S. 23:995) prohibits any person from hiring an alien who is not entitled to lawfully reside or work in the U.S.

Proposed law expands present law by prohibiting any employer from hiring an unauthorized alien or enter into any contractual agreement to obtain the labor of an alien who is not entitled to lawfully reside or work in the U.S.

Present law (R.S. 23:996) authorizes an agency, department, board, or commission of the state or any political subdivision to notify the attorney general or the district attorney that the agency has determined, after an investigation initiated by the agency or by a private party's written complaint to the agency, that an employer who operates a La. business or enterprise is knowingly employing an undocumented alien in violation of present law.

Present law authorizes the attorney general or district attorney to issue a cease and desist order for violations of law and requires the termination of undocumented workers.

Proposed law changes the term "undocumented worker" to "unauthorized alien".

Proposed law provides that the provisions of proposed law shall only apply to employees hired on or after Jan. 1, 2012, and to contracts entered into on or after Jan. 1, 2012.

(Amends R.S. 23:991, 992, 992.2, 995(A), and 996(A) and (B); Adds R.S. 23:991.1 and 992.3)